IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.7187 OF 2005

Bhartiya Suraksha Rakshak & General
Kamgar Union. ...Petitioner..
Versus
The Security Guard Board & Ors. ...Respondents.

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Mr. I. S. Thakur with Mr. Rathore Sunilkumar for the Petitioner.
Ms. Pallavi Divekar for Respondent No.1.
Mr. Jayesh Desai for Respondent No.3.

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CORAM : F.I. REBELLO AND
DR. D.Y. CHANDRACHUD, JJ.

February 23, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at the request of Counsel taken up for hearing.

2. This petition has been filed by a Trade Union for espousing the cause of the Security Guards employed by the

Second Respondent. The Third Respondent is a private agency engaged in the supply of Security Guards to diverse establishments. The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, was extended to the area comprised in the Districts of Nagpur, Aurangabad, Pune, Nasik and Raigad by a notification issued by the State Government under sub-section (3) of Section 1 of the Act. On behalf of the Petitioner, it has been submitted that in violation of the provisions of the Act and the Scheme framed thereunder, the Second Respondent has not been registered as an employer and yet continues to engage the services of the Security Guards from the Third Respondent. It has been submitted in the petition that the Third Respondent has not obtained any exemption in respect of the aforesaid Security Guards. The Second Respondent, it is submitted, has committed a breach of clause 26(2) of the Statutory Scheme framed under the Act which provides thus:

> "A registered employer shall not employ a Security Guard other than a Security Guard who has been allotted to him by the Security Guard Board in accordance with the provisions of clause 9(a).
>
> Provided that prohibition contained herein will

not apply to the Security Guards directly employed by registered Employers."

In these proceedings, reliance has been placed on several orders passed by Division Benches of this Court. Among them, are orders dated 10th January 2003 (in **Maharashtra Rajya Suraksha Rakshak & General Kamgar Union vs. Security Guards Board for Greater Bombay & Thane District**, Writ Petition (St) No.49397 of 2002); 31st July 2003 (in **Suraksha Rakshak & General Kamgar Sena vs. The Security Guards Board for Gr. Bombay & Thane District**, Writ Petition 2496 of 2003); 29th September 2004 (in **Bhartiya Suraksha Rakshak & General Kamgar Union vs. The Security Guards Board,** Writ Petition 3947 of 2004); and 3rd February 2005 (in **Suraksha Rakshak & General Kamgar Sena vs. Security Guards Board for Greater Bombay & Thane District**, Writ Petition 7055 of 2004).

3. An affidavit in reply has been filed in these proceedings by the Secretary of the Security Guards Board. It has been stated therein that the First Respondent was recently established and the

process of registering principal employers is in progress. It has been stated that the availability of jobs for newly registered Security Guards is low and unless principal employers are registered with the Board, the Security Guards registered with the Board will not get jobs and will be rendered jobless. It has been submitted that while the First Respondent is taking necessary steps to register new principal employers and to take action against employers violating the provisions of the Act, a direction may be issued to the Second Respondent to get registered with the Board.

4. A reply has been filed on behalf of the Third Respondent in which it has been stated that of the 21 persons whose names have been set out in Exhibit 'A' to the petition, only 12 persons, namely, those at Sr.Nos. 2, 4, 6, 11, 13, 15, 16, 17, 18, 19, 20 and 21 were working with the Second Respondent on the date of the institution of the petition in October 2005. The remaining 9 persons, it was stated, were not working with the Second Respondent. Out of those 12, it has been stated that on the date of the filing of the affidavit on 23rd February 2006, only 8 persons at

Sr. No.2, 4, 13, 15, 17, 18, 19 and 20 are working, while the rest have left the service of the Third Respondent. It has been stated that the Third Respondent has made an application for exemption under Section 23 of the Act on 23rd August 2004 in respect of 60 Security Guards which is pending consideration before the State Government. Of them, 17 Security Guards including 1 Security Officer and 3 Assistant Security Officers were deployed by the Third Respondent in the office of the Second Respondent at the time when the application was made. Out of the 17, at present three Security Guards are stated to be working with the Second Respondent, while the rest have left service. In place of the said 14 Security Guards, it has been stated, that the Third Respondent proposed to make an application for exemption on behalf of the other Security Guards.

5. Under the provisions of the Act, the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme,2002 has been framed. The object of the Scheme is to regulate the employment of Private Security Guards employed in

factories and establishments, to make better provisions for their terms and conditions of employment and welfare through the establishment of a Board and for matters connected therewith. The Scheme applies to registered Security Guards of the Board and Security Guards in the employment of an employer agency deployed in any factory or establishment and employer agencies and registered principal employers in the areas specified in the Schedule. The functions of the Board are enunciated in the scheme. Under clause (x), the Board has to maintain a register of principal employers, a register of registered employer agencies and a register of Security Guards. Clause 13(1)(a) lays down that every principal employer who engages registered Security Guards of the Board or Security Guards of employer agencies, whose Security Guards are granted exemption by the Government, in his establishment, is liable get himself registered with the Board. Similarly, every employer agency which directly employees private Security Guards for deployment to establishments and factories to whose security guards, the State Government has granted exemption, under Section 23 of the Act is liable to get itself

registered with the Board. Any person who desires to work as Security Guard, similarly is under an obligation to apply to the Board under Clause 14(1) of the Scheme. The obligations of registered principal employers are enunciated in clause 25 of the Scheme and sub-clause (2) thereof lays down that a registered principal employer shall not employ a Security Guard other than a Security Guard who has been allotted to him by the Secretary in accordance with provisions of clause 8(e). Under the proviso, the prohibition contained in sub-clause (2) of Clause 25 does not, however, apply to Security Guards directly employed by registered principal employers. The obligations of employer agencies are provided for in clause 26 of the Scheme. Clause 28(1) provides that every registered principal employer may either engage for employment Security Guards registered with the Board or Security Guards of an employer agency registered with the Board or may employ any person who is a direct employee of such employer.

6. Having regard to these provisions of the Scheme, several Division Benches of this Court have passed a consistent

line of orders of which note has been taken earlier. In the order dated 10th January 2003 in Writ Petition (ST) No.49397 of 2002, the Division Bench upon reading the relevant provisions of the Act and the Scheme, made it clear that in view of the provisions thereof, the Security Guards who are members of the Petitioner-Union there, would have to get themselves registered with the Board. The principal employer would also have to be registered and necessary directions have been given to the Board while allotting services of the Security Guards to keep in mind that they were working as Security Guards with the principal employer.

7. In the present case, the Second Respondent was not registered with the Security Guards Board. Though the Third Respondent claims to have submitted an application on 23rd August 2004 for exemption under Section 23 of the Act, in respect of 60 Security Guards of which 17 were at one time deployed with the Second Respondent, only 3 of those guards are stated to have been working on the date of the filing of the affidavit (23rd February 2006) in the establishment of the Second Respondent. As of date,

it is an admitted fact that no exemption has been granted or received. In that view of the matter, having regard to the relevant clauses of the scheme which have been noted and the earlier orders passed by the Division Benches of this Court, this petition will stand disposed of in the light of the following directions:

-(i) The Security Guards whose names have been set out in Exhibit ' A to the petition, will make an application for registration with the First Respondent within a period of three months. Upon such application being made, the Board will follow the provisions of the Act and the scheme and shall take an appropriate decision thereon in accordance with law;

-(ii) The Second Respondent shall similarly make an application for registration with the First Respondent-Board;

-(iii) As far as possible while allotting services of the Security Guards, the Board will have due regard to those of the Security Guards whose names have been mentioned in Exh.A to the

petition who are working with the Second Respondent;

-(iv) Ad-interim relief granted on 26th October 2005 will continue to operate in respect of those of the Security Guards who are deployed in the establishment of the Second Respondent on the date of the passing of the order of this Court dated 26th October 2005 till the disposal of the applications of the Petitioner and of the Second Respondent by the Board;

-(v) In the event that the Second Respondent decides to engage Security Guards on a direct and regular basis, it would be open to the Board to allot the concerned Security Guards to any other establishment.

8. The petition is, accordingly disposed of. There shall be no order as to costs.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)